IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2025-012608-CA-01
SECTION: CA31
JUDGE: Migna Sanchez-Llorens

Roy Miller

Plaintiff(s)

vs.

Hagay Orgad et al

Defendant(s)

_____/

ORDER ON DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

THIS CAUSE came before the Court upon Defendants', Or Biton and Hagay Orgad, Motions to Dismiss Plaintiff's Amended Complaint pursuant to Florida Rules of Civil Procedure 1.140(b)(2) and (b)(3). The Motions seeks dismissal based on lack of personal jurisdiction, improper venue, and forum non conveniens. [D.E. 12 & 13]. Plaintiff Roy Miller filed a Response in Opposition supported by affidavits and exhibits. [D.E. 15].

BACKGROUND

On August 21, 2025, Plaintiff Miller filed an Amended Complaint [D.E. 17], removing the Intentional Infliction of Emotional Distress claim and adding a Violation of Florida's Anti-SLAPP Statute. The Amended Complaint attaches exhibits, including: (A) Israeli Hague Convention Service Guidelines (translated); (B) The Hague Convention text; (C) Biton's 2013 Israeli police statement (translated); and (D) Explicit sexual text messages sent by Biton to a supposed 13-year-old girl. (translated). On September 3, 2025, Miller submitted translated testimony of Biton given on July 20, 2025, given in Israel, which allegedly supports count III of his amended complaint.

Defendant Or Biton ("**Biton**") is a resident and citizen of Israel. Defendant Hagay Orgad

("**Orgad**") is an attorney licensed in Israel who represents Biton in Israeli litigation. Plaintiff alleges that Defendants have, since 2021, engaged in a pattern of intentional tortious conduct directed toward Florida, primarily through the institution of a meritless defamation suit in Israel, designed to interfere with Plaintiff's constitutionally protected journalism and advocacy work in Florida.

On September 8, 2025, Defendants moved to dismiss arguing they have no contacts with Florida, that Israel is the more convenient forum, and that Florida has no interest in adjudicating claims related to an Israeli defamation case, citing *Diatronics, Inc. v. Elbit Computers, Ltd.*, 649 F. Supp. 122 (S.D.N.Y. 1986).

LEGAL ANALYSIS

I. Personal Jurisdiction

Determining personal jurisdiction follows a two-step inquiry: (1) whether the allegations bring the action within Florida's long-arm statute, and (2) whether sufficient minimum contacts exist to satisfy due process. *Pianezza v. Mia Collection Servs. LLC,* 388 So. 3d 992 (Fla. 3d DCA 2024). The exercise of jurisdiction must comport with the Fourteenth Amendment. *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989).

To determine whether there is personal jurisdiction over non-resident defendants, Florida courts employ the two-part test established in *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989). First, this Court must determine whether the complaint alleges sufficient jurisdictional facts to bring the defendant within the ambit of Florida's long-arm statute. Second, this Court must analyze whether the foreign defendant has sufficient "minimum contacts" with the forum such that exercising personal jurisdiction would not violate the defendant's due process rights. *Estes v. Rodin*, 259 So. 3d 183, 190 (Fla. 3d DCA 2018).

Finally, to contest the complaint's allegations or to contest minimum contacts, a defendant must

file an affidavit supporting their position. *Venetian Salami*, 554 So. 2d at 502-03. The burden then shifts to the plaintiff to prove by affidavit the basis upon which jurisdiction may be obtained. *Id.* The court should reconcile the affidavits when possible. *Id.* Neither Party here requested an evidentiary hearing.

Plaintiff's allegations in the Amended Complaint satisfy § 48.193(1)(a)(2), Fla. Stat., conferring jurisdiction over persons committing tortious acts outside Florida causing injury within the state. This encompasses intentional torts directed at the forum with harmful effects suffered here. *Internet Solutions Corp. v. Marshall*, 39 So. 3d 1201, 1214 (Fla. 2010).

Defendants moved to dismiss the Amended Complaint, re-adopting their prior motions without revision. [D.E. 21].

II. Motion to Dismiss for Forum Non-Conveniens

In *Kinney System, Inc. v. Continental Ins. Co.,* 674 So. 2d 86, 93 (Fla. 1996), the Florida Supreme Court adopted the federal doctrine of *forum non conveniens*, including the four-pronged analysis. The *Kinney* analysis was later codified in Fla. R. Civ. P. 1.061, under which a court may dismiss an action only if the defendant meets its burden of convincingly demonstrating:

1. An adequate alternate forum exists with jurisdiction over the whole case;
2. All relevant factors of private interest favor the alternate forum, "weighing in the balance a strong presumption against disturbing plaintiffs' initial forum choice;"
3. "If the balance of private interests is at or near equipoise, the court further finds that factors of public interest tip the balance in favor of trial in the alternate forum; and"
4. Plaintiffs can reinstate their suit in the alternate forum "without undue inconvenience or prejudice."

Fla. R. Civ. P. 1.061(a); *see also Cortez v. Palace Resorts, Inc.,* 123 So. 3d 1085, 1091 (Fla. 2013).

"The burden of proof of each element in the *forum non conveniens* analysis is on the Defendants." *Publicidad Vepaco, C.A. v. Mezerhane,* 176 So. 3d 273, 277 (Fla. 3d DCA 2015) (*citing Telemundo Network Grp., LLC v. Azteca Int'l Corp.,* 957 So. 2d 705, 709 (Fla. 3d DCA

2007)). "[U]nless the balance is strongly in favor of the defendant; the plaintiff's choice of forum should rarely be disturbed." *Kinney,* 674 So. 2d at 89 (*quoting Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 508 (1946)). Where a domestic plaintiff is suing in its home forum, a motion to dismiss for *forum non conveniens* "should be granted only in 'unusually extreme circumstances' where the court is 'thoroughly convinced that material injustice is manifest.'" *Telemundo,* 957 So. 2d at 709 (citations omitted). This court has considered all four *Kinney* factors as outlined in Fla. R. Civ. P. 1.061(a).

a. Adequate Alternate Forum.

The concern with the first prong of the analysis is "the ability to perfect service of process." *Kinney,* 674 So. 2d at 90. As explained in *Cortez*, "[t]his factor encompasses two separate considerations: availability and adequacy." *Cortez*, 123 So. 3d at 1091.

Venue is proper in the county where the cause of action accrued. § 47.011, Fla. Stat. (2025); *Tucker v. Fianson*, 484 So. 2d 1370, 1371 (Fla. 3d DCA 1986). Miller resides and works in Miami-Dade County, suffering damage here. Defendants presented no contrary evidence.

b. Private Interest Factors

The private interests considered in the second prong of the analysis encompass four broad practical concerns: (1) adequate access to evidence and relevant sites; (2) adequate access to witnesses; (3) adequate enforcement of judgments; and (4) the practicalities and expenses associated with the litigation. *Kinney,* 674 So. 2d at 91. The Third District Court of Appeal recently explained:

> Prior to addressing the four concerns involved in the analysis of the private interest factors, it is necessary to address the presumption in favor of a plaintiff's choice of forum. *See Cortez,* 123 So. 3d at 1092 (holding that the "[k]ey to th[e] [private interest] prong of the *forum non conveniens* inquiry, ... is that 'the reviewing court always should remember that a strong presumption favors the plaintiff's choice of forum.'" (*quoting Kinney*, 674 So. 2d at 91)). The presumption in favor of a plaintiff's choice of forum "'can be defeated only if the relative disadvantages to the defendant's private interests are of sufficient weight to overcome the presumption.'" *Id*. (*quoting*

Kinney, 674 So. 2d at 91).

Publicidad Vepaco, 176 So. 3d at 278. Moreover, the Florida Supreme Court states:

> [I]t is axiomatic that the plaintiff has the right to choose the forum. While the doctrine of *forum non conveniens* is designed to prevent an abuse of that right when it would cause a material injustice to the defendant**,** it certainly is not designed to empower defendants to disadvantage plaintiffs by engaging in reverse forum-shopping where, as in a scenario like the one presented in this case, litigating in Florida would not cause a substantial burden to the defendant.

Cortez, 123 So. 3d at 1094.

Defendants argue that all practical considerations for the litigants—the private interests—point to Israel as the proper forum. Their position is that they were the first to file a lawsuit, establishing Israel as the initial forum four years before the plaintiff filed in Florida. They contend that the Israeli court already provides access to evidence, witnesses, and a mechanism for enforcing judgments related to the underlying dispute. They point out that Plaintiff is already an active participant in the Israeli case and is represented by local counsel.

Plaintiff argues that the true harm and evidence are in Florida, making it the only practical forum. The most significant private interest is the evidence of his damage, specifically the canceled $150,000 contract with Jonathan Kapach, which is a key part of his claim for financial injury. The witnesses and documents related to this canceled contract are in Florida, not Israel. Furthermore, Plaintiff has documented a spinal condition that, according to his doctor, makes him unable to fly or sit for extended periods, rendering travel to Israel physically impossible. This medical issue creates an overwhelming practical barrier to litigating his claims in Israel. Plaintiff's medical condition, certified by Dr. Erick Daez and recognized by the Israeli court, prevents travel abroad.

c. Public Interest Factors

In *Cortez*, the Florida Supreme Court reiterated that the private interest factors are generally considered more important than the public interest factors. *Cortez*, 123 So. 3d at 1093. However, the Florida Supreme Court reaffirmed that the public interest factors must still be considered even

if the "private factors weigh more heavily in favor of the alternative forum." *Id.* Specifically, the *Cortez* Court stated:

> [W]e emphasize that Florida courts also should always consider this third step of the *forum non conveniens* inquiry, even if the private factors weigh more heavily in favor of the alternative forum, and should require that the balance of public interests also be tipped in favor of the alternative forum in order to defeat the presumption favoring the plaintiff's forum choice.

Id. Thus, if the private interest factors are at or near equipoise or weigh more heavily in favor of the alternative forum, the court should still consider the public interest factors, which may nonetheless prevent dismissal of an action. To warrant dismissal of an action, both the private and the public interest factors must favor the alternative forum. *Id.*

The third prong, the weighing of public interest factors or "balance of public inconveniences," focuses on "whether the case has a general nexus with the forum sufficient to justify the forum's commitment of judicial time and resources to it." *Kinney,* 674 So. 2d at 91-92. To that end, courts focus on three principles: (1) that courts may validly protect their dockets from cases which arise within their jurisdiction but which lack significant connection to it; (2) courts may legitimately encourage trial of controversies in the localities where they arise; and (3) a court may validly consider its familiarity with governing law when deciding whether or not to retain jurisdiction over a case. *Kinney,* 674 So. 2d at 92. If the public interest factors "are at or near equipoise, then the third step of the inquiry will provide no basis for defeating the presumption favoring plaintiff's choice of forum." *Id.*

Defendants argue that the public interest overwhelmingly favors dismissing the case and keeping it in Israel. Quoting directly from *Kinney* they contend that Florida's judicial resources and taxpayer money should not be expended on a lawsuit that has "no genuine connection to the state". The only link to Florida, they assert, is that the Plaintiff happens to reside here, which is not enough to justify burdening the state's legal system.

Plaintiff argues that Florida has a significant public interest in protecting its residents from

malicious foreign lawsuits intended to stifle free speech and cause economic harm within its borders. The Amended Complaint frames the Israeli lawsuit not as a legitimate legal dispute, but as a strategic lawsuit against public participation (SLAPP). Florida has a strong, legislatively declared public policy against such lawsuits, as codified in its Anti-SLAPP Statute. Plaintiff argues that Florida has a compelling interest in providing a forum for its citizens to seek remedies under this statute, especially when the alleged harm—including the cancellation of a $150,000 contract—occurred in Florida. Furthermore, Plaintiff alleges that the case implicates the U.S. SPEECH Act, a federal law designed to protect U.S. citizens from foreign defamation judgments that violate First Amendment rights, creating a strong national and state public interest in hearing the case. The state has a strong interest in protecting residents, especially journalists, from foreign judicial misuse to suppress speech. *Calder v. Jones*, 465 U.S. 783, 789 (1984). Florida courts are suited to applying the Anti-SLAPP Statute and SPEECH Act. No administrative burden outweighs these interests, promoting judicial economy.

d. Reinstatement of Suit

This final step in the analysis is designed to ensure that the remedy available in the alternate forum does not become illusory. *Kinney,* 674 So. 2d at 92. Defendants argue that Plaintiff would suffer no prejudice if the case were dismissed in Florida because he is already an active participant in the Israeli legal system. Their motion repeatedly states that Plaintiff has retained an Israeli attorney who has filed pleadings on his behalf in the ongoing Israeli lawsuit. From their perspective, since Plaintiff is already engaged in litigation in Israel, he clearly has access to that forum and can raise his grievances there. They contend that Plaintiff has not alleged any facts showing he would be unable to obtain redress in the Israeli courts, and therefore, dismissing the Florida case would cause him no undue harm or inconvenience.

Plaintiff alleges that forcing him to litigate in Israel would cause severe and undue prejudice. Moreover, an Israeli court has no jurisdiction to grant remedies under Florida's Anti-SLAPP statute and the U.S. federal SPEECH Act. Therefore, dismissing the Florida case would

effectively force him to abandon the core of his lawsuit, which constitutes extreme legal prejudice. Second, he faces a significant practical prejudice: his documented medical condition prevents him from flying, making it physically impossible for him to travel to Israel to pursue his case.

Miller's affidavits show Defendants intentionally directed pre-suit communications to his email, and demands to his Miami-Dade residence, knowingly instituting an abusive foreign action to harass and silence a Florida-based journalist. Under *Calder*, jurisdiction exists where an intentional tort is "expressly aimed" at the forum and the "brunt" of harm is felt there. Defendants knew of Plaintiff's Florida ties, and the suit's deterring effects occurred here as stated in the Amended Claim.

Accordingly, it is hereby,

ORDERED AND ADJUDGED as follows:

This Court finds that Defendant has not satisfied its burden as outlined by the Florida Supreme Court in *Kinney,* clarified in *Cortez,* and codified in Fla. R. Civ. P. 1.061. Therefore, the Motion to Dismiss for *Forum Non-Conveniens* is **DENIED**.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 20th day of January, 2026.

2025-012608-CA-01 01-20-2026 3:55 PM
Hon. Migna Sanchez-Llorens

CIRCUIT COURT JUDGE
Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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